

when the debtor does not pay or resolve the debt within 30 days of the due date or 30 days after the notification of the debt is mailed to the debtor, and when the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

(d) Grant debt. Any overpayment, audit disallowance or other breach of the terms or conditions of a grant or cooperative agreement that results in a debt owed to the Federal Government.

(e) Write-off. When an agency official determines, after all appropriate recovery tools have been used, that a debt is uncollectible. Action to recover the debt ceases and the debt is removed from the agency's receivables.

Subpart B-Grant Debt

§22.10 Recipient responsibility and Pre-Award Actions.

(a) Recipient responsibility. In accordance with OMB Circular A-129, a recipient shall be held accountable for its grant debts.

(b) Pre-award actions.

(1) Grants officers shall obtain recipients' Taxpayer Identification Numbers (these may be Social Security Numbers for individuals and Employer Identification Numbers for business or non-profit entities) to facilitate later collection of delinquent grant debts, if necessary.

(2) Grants officers may obtain pre-award credit reports as indicators of recipients' financial responsibility. If such reports or other pre-screening information disclose that a potential recipient is delinquent on a grant debt to an agency of the United States Government, the grants officer may:

(i) Take such information into account when determining whether the potential recipient is responsible with respect to that grant or agreement.

(ii) Consider not awarding the grant or entering into the cooperative agreement until payment is made or satisfactory arrangements are made with the agency to which the grant debt is owed.

§22.11 Post-award actions.

(a) Administrative offset. DoD Components may use administrative offset to recover delinquent grant debts owed the United States Government by a recipient. In using administrative offset, DoD Components shall follow the due process provided in 31 U.S.C. 3716 and 4 CFR 102.2 and 102.3, where that statute and those regulations are applicable.

(1) DoD Components are not required to use offset in every instance in which there is an available source of funds, but shall make case-by-case judgments whether offset is appropriate. The rationale for the judgment shall be documented in the award file.

(2) Recovery of grant debt by administrative offset shall not be used where the grants officer determines that offset will substantially interfere with, or defeat the purpose of, the program for which the offset is contemplated.

(3) Grants and cooperative agreements that are paid in advance (e.g., payment is made in advance of program execution or before costs are incurred) shall not be subject to offset. DoD Components may unilaterally convert the method of payment to a reimbursement basis to enable use of administrative offset, if that is deemed to be in the best interest of the United States Government.

(b) Other Debt Collection Mechanisms. In addition to administrative offset, DoD Components may recover delinquent grant debts using other means that are available pursuant to Volume 5 of DoD 7000.14-R,² which implements OMB Circular A-129.

(c) Interest, penalties and administrative costs. DoD Components shall apply interest, penalties, and administrative costs to delinquent grant debt, consistent with OMB Circular A-129 and 4 CFR 102.13, except where applicable statutes or regulations prohibit or explicitly set such charges (or where 4 CFR 102 provides other exemptions).

(d) Write-off procedures. Any grant debt that is determined to be uncollectible shall be written off in accordance with Volume 5 of DoD 7000.14-R.

Subpart C-Other Qualification Matters

§22.20 Certifications and representations. [Reserved].

§22.21 Debarment and suspension.

(a) Qualification requirements. Debarment and suspension aspects of qualification are addressed in Subparts A through E of 32 CFR 25, which is the Governmentwide implementation of Executive Order 12549, "Debarment and Suspension" (51 FR 6370, 3 CFR, 1986 Comp., p.189).

² Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145.

(b) Debarring and suspending officials. DoD debarring and suspending officials for nonprocurement transactions, including grants and cooperative agreements, shall be the debarring and suspending officials for procurement contracts, identified at 48 CFR 209.4, in the "Defense Federal Acquisition Regulation Supplement."

(c) Procedures. Debarment and suspension procedures for nonprocurement transactions shall be the same as those specified by 48 CFR 209.4 for procurement contracts.

§22.22 Drug-free workplace.

(a) Qualification requirements. Drug-free workplace requirements are addressed in Subpart F of 32 CFR 25, which is the Governmentwide implementation of the Drug-Free Workplace Act of 1988, as it applies to grants, cooperative agreements, and other nonprocurement awards.

(b) Authority to make determinations concerning recipient qualifications. Directors of the Defense Agencies or their designees shall exercise the authority of the Secretary of Defense to make determinations required under 32 CFR 25.610(b) and 25.615.

§22.23 Lobbying restrictions.

(a) Qualification requirements. Requirements are specified in 32 CFR 28, "New Restrictions on Lobbying." 32 CFR 28 is the Governmentwide implementation of 31 U.S.C. 1352, as it applies to grants, cooperative agreements, and other nonprocurement awards.

(b) Submission of disclosures. The Office of the Director of Defense Procurement (Contract Policy and Administration), or ODDP(CPA), will compile disclosure reports received under 32 CFR 28.600. Those reports are submitted to Congress and the Inspector General, DoD, by May 31 and November 30 of each calendar year. DoD Components shall submit nonprocurement disclosure reports:

(1) Received during the six-month period ending on March 31 of each year no later than May 2 of that year and those received in the six-month period ending on September 30 no later than November 2.

(2) To ODDP(CPA) through the same channels established for submission of lobbying disclosures required for procurement contracts under 48 CFR 3.8, "Limitation on the Payment of Funds to Influence Federal Transactions."

§22.24 Nondiscrimination assurances.

(a) Before signing a grant, cooperative agreement, or other instrument providing financial assistance, the grants officer

shall ensure that the intended recipient has provided the written assurances required by:

(1) 32 CFR 195, the Department of Defense implementation of Title VI of the Civil Rights Act of 1964. 32 CFR 195.6 requires written assurances of compliance with that part, which prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving financial assistance from the Department of Defense.

(2) 32 CFR 56, the Department of Defense implementation of section 504 of the Rehabilitation Act of 1973 and related statutes. 32 CFR 56.9(b) requires written assurances of compliance with that part, which states that a recipient's programs and activities, including but not limited to those under the grant or agreement, must be accessible to and usable by people with disabilities.

(b) In ensuring that recipients have provided such written assurances, grants officers should utilize methods that minimize administrative and paperwork burdens on recipients. If no less burdensome method is available, grants officers may include a certification in the grant or agreement. [For example, such a certification may state: "By signing the agreement or accepting funds under the agreement, the recipient certifies that it is complying with the requirements of: (1) Title VI of the Civil Rights Act of 1964, as implemented by 32 CFR 195, concerning nondiscrimination in activities under the agreement based on race, color, or national origin; and (2) section 504 of the Rehabilitation Act of 1973, as implemented by 32 CFR 56, concerning access for people with disabilities in recipient programs and activities, including but not limited to those under the agreement."]

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**PART 25--GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)**

Unlike some other parts in this interim-guidance draft of the DoD Grant and Agreement Regulations, Part 25 has full legal effect and is already codified in the Code of Federal Regulations (CFR). Users of this draft may find this part at 32 CFR 25, in the July, 1992, and later editions of Title 32 of the CFR (in earlier editions, before being redesignated as Part 25, it appeared at 32 CFR 280).

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PART 28--NEW RESTRICTIONS ON LOBBYING

Unlike some other parts in this interim-guidance draft of the DoD Grant and Agreement Regulations, Part 28 has full legal effect and is already codified in the Code of Federal Regulations (CFR). Users of this draft may find this part at 32 CFR 28, in the July, 1992, and later editions of Title 32 of the CFR (in earlier editions, before being redesignated as Part 28, it appeared at 32 CFR 282).

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PART 31-ADMINISTRATION OF DoD GRANTS AND AGREEMENTS**Subpart A-General Matters and Field Administration Services**

§31.1 Scope. This part prescribes policies and procedures for administering grants and cooperative agreements.

§31.2 Policy.

(a) DoD policy is to minimize unnecessary duplication of field administration services, and relieve the concomitant increased burdens on recipients, when recipients of grants and agreements also perform Federal contracts. Therefore, DoD offices assigned cognizance over the performance of contract administration services for selected organizations or classes of organizations shall also perform administration services for grants and cooperative agreements with such organizations. These offices, referred to in this part as "grants administration offices," are (see the "DoD Directory of Contract Administration Services Components," DLAH 4105.4,¹ for specific addresses of regional offices):

(1) Regional offices of the Office of Naval Research, for grants and agreements with:

(i) Institutions of higher education and laboratories affiliated with such institutions, to the extent they are treated in accordance with the university cost principles in OMB Circular A-21.²

(ii) Nonprofit organizations that are subject to the nonprofit cost principles in OMB Circular A-122,³ if their principal business with the Department of Defense is research and development.

(2) Regional offices of the Defense Contract Management Command, for grants and agreements with all other entities, including:

(i) Commercial organizations.

(ii) Nonprofit organizations identified in Attachment C of OMB Circular A-122 that are subject to commercial cost principles in 48 CFR 31.

¹ Copies may be obtained from Defense Logistics Agency, Publications Distribution Division (DASC-WP), Cameron Station, Alexandria, VA 22304-6100.

² Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

³ See footnote 2 to section 31.2(a)(1)(i).

(iii) Nonprofit organizations subject to the nonprofit cost principles in OMB Circular A-122, if their principal business with the Department of Defense is other than research and development.

(iv) State and local governments.

(b) Contracting activities shall use cross-servicing arrangements whenever practicable and, to the maximum extent possible, delegate responsibility to the cognizant grants administration offices for field administration of grants and cooperative agreements. This will minimize the extent to which recipients of grants and agreements are unnecessarily subjected to duplicative reviews by multiple contracting activities.

§31.3 Grants administration office functions. Responsibilities of cognizant grants administration offices shall be:

(a) Performing pre-award surveys, when requested by grants officers.

(b) Performing property administration services.

(c) Reviewing recipients' financial management, property management and purchasing systems.

(d) Determining that recipients have drug-free workplace programs, as required under 32 CFR 25.

(e) Ensuring timely submission of required reports.

(f) Executing administrative closeout procedures.

(g) Performing other administration functions as delegated by applicable cross-servicing agreements or letters of delegation.

Subpart B-Administrative Requirements

§31.10 Requirements in other parts. In addition to the procedures in this part, administrative requirements for grants and cooperative agreements are specified in the following portions of the DoD Grant and Agreement Regulations:

(a) Domestic recipients.

(1) Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified by:

(i) The previous version of OMB Circular A-110⁴ (issued July 30, 1976), for grants and agreements performed by

⁴ See footnote 2 to section 31.2(a)(1)(i).

domestic institutions of higher education and nonprofit organizations, pending formal Department of Defense implementation of the recently issued update of that OMB Circular (58 FR 62992, November 29, 1993). In the interim, grants officers may, if the recipient consents, incorporate terms and conditions providing for administration of awards in accordance with the updated Circular A-110.

(ii) 32 CFR 33, the Department of Defense implementation of OMB Circular A-102,⁵ for grants and cooperative agreements performed by State or local governments.

(iii) 32 CFR 34 for commercial organizations, for those DoD Components' programs where awards to commercial organizations are permitted.

(2) Special requirements are specified in Subpart B of 32 CFR 37 for use on an exception basis to administer cooperative agreements under 10 U.S.C. 2371.

(b) Foreign recipients. DoD Components shall use the administrative requirements specified in paragraph (a)(1) of this section, to the maximum extent practicable, for grants and cooperative agreements with foreign recipients.

§31.11 Metric system of measurement. [Reserved].

⁵ See footnote 2 to section 31.2(a)(1)(i).

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**PART 33--UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND
COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

Unlike some other parts in this interim-guidance draft of the DoD Grant and Agreement Regulations, Part 33 has full legal effect and is already codified in the Code of Federal Regulations (CFR). Users of this draft may find this part at 32 CFR 33, in the July, 1992, and later editions of Title 32 of the CFR (in earlier editions, before being redesignated as Part 33, it appeared at 32 CFR 278).

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**PART 34-ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS
WITH COMMERCIAL ORGANIZATIONS**

§34.1 Purpose. This part prescribes standard administrative requirements for grants and cooperative agreements with commercial organizations, for DoD programs where awards to commercial organizations are permitted.

§34.2 Policy.

(a) General. Pending formal Department of Defense implementation of the recently issued update of OMB Circular A-110¹ (58 FR 62992), grants officers shall apply the administrative requirements in the provisions of the previous version of OMB Circular A-110 (issued July 30, 1976) to grants and cooperative agreements with commercial organizations, with the following clarifications, additions, and exceptions:

(1) Cash depositories, bonding and insurance, records retention, and program income. Grants officers shall apply the provisions of Attachments A, B, C, and D of OMB Circular A-110.

(2) Cost sharing and matching. Grants officers shall apply the requirements of Attachment E of OMB Circular A-110, except that:

(i) Recipients may use their independent research and development (IR&D) funds as cost sharing or matching for a grant or cooperative agreement. In such cases, the IR&D contributions must meet all criteria other than paragraph 3.b.(5) in Attachment E to OMB Circular A-110. Use of IR&D as cost sharing is permitted, whether or not the Government decides at a later date to reimburse any of the IR&D as allowable indirect costs under the commercial cost principles in 48 CFR 31.

(ii) Real property or nonexpendable personal property purchased with recipients' funds may be included as recipients' cost sharing or matching, if recipients notify grants officers in advance that such property is being included. To be included, the property must meet the general requirement for recipients' contributions--they may count as cost sharing or matching to the extent that they are used for authorized purposes of the agreement, consistent with applicable cost principles.

(3) Standards for financial management systems. The standards in Attachment F of OMB Circular A-110 shall apply. To the extent that they comply with these minimum standards, recipients shall be allowed and encouraged to use financial

¹ Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

management systems already established for doing business in the commercial marketplace.

(4) Financial reporting, program monitoring, and program reporting. Grants officers may apply the provisions of Attachments G and H of OMB Circular A-110, or may include equivalent technical and financial reporting requirements that ensure reasonable oversight of the expenditure of appropriated funds. As a minimum, equivalent requirements must include:

(i) Periodic reports (at least annually, and no more frequently than quarterly) addressing both program status and business status.

(A) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(B) The business portions of the reports shall provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original grant or agreement; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations.

(C) When grants officers previously authorized advance payments [pursuant to paragraph (a)(5) of this section], they should consult with the program manager and consider whether program progress reported in the periodic report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

(ii) A final report that addresses all major accomplishments under the agreement.

(5) Payment requirements. Attachment I of OMB Circular A-110 shall apply, except that reimbursements, not advance payments, are the preferred method of payment for commercial organizations (notwithstanding paragraphs 3, 4 and 5 of Attachment I). Advance payments may be used in exceptional circumstances, subject to the following conditions:

(i) The grants officer, in consultation with the program manager, judges that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the agreement (e.g., as startup funds for a project being performed by a newly formed company). The rationale for the judgment shall be documented in the award file.

(ii) Recipients and the DoD Component maintain procedures to ensure that minimum time elapses between the

recipients' receipt of cash advances and their disbursements of the funds for program purposes.

(iii) Recipients maintain cash advances in interest-bearing accounts and remit annually the interest earned to the awarding DoD Component. A recipient may retain interest amounts up to \$250 per year on such advance payments, to defray administrative expenses. The DoD Component shall return funds received from these interest payments to the Department of the Treasury's miscellaneous receipts account.

(6) Revision of financial plans and cost principles. The standards of Attachment J of OMB Circular A-110 shall apply, except where that Attachment refers to cost principles applicable to institutions of higher education. The commercial cost principles in 48 CFR 31 and 48 CFR 231 (in the "Federal Acquisition Regulation" and "Defense Federal Acquisition Regulation Supplement," respectively) shall be used to determine the allowability of costs charged to the Government under grants and cooperative agreements with commercial organizations.

(7) Closeout, suspension and termination. Grants officers shall apply the provisions of Attachments K and L of OMB Circular A-110.

(8) Standard application forms. For grants and cooperative agreements with commercial organizations, compliance with Attachment M of OMB Circular A-110 is optional.

(9) Property management standards. Attachment N of OMB Circular A-110 shall apply, except that title to all real property and nonexpendable tangible personal property that is purchased by the recipient with federal funds under the grant or agreement shall be vested in the Government, unless statute authorizes otherwise (notwithstanding paragraphs 3, 5, and 6 of Attachment N). Recipients must obtain the prior approval of the cognizant grants officer before making any such purchases of real property or nonexpendable tangible personal property with federal funds under the award.

(10) Patents. Grants and cooperative agreements entered into with commercial organizations shall comply with:

(i) 35 U.S.C. Chapter 18, as implemented by 37 CFR 401, which applies to inventions made under cooperative agreements with small businesses for research and development. 37 CFR 401.14 provides a standard clause that is required in such cooperative agreements in most cases, 37 CFR 401.3 specifies when the clause shall be included, and 37 CFR 401.5 specifies how the clause may be modified and tailored.

(ii) Executive Order 12591 (52 FR 13414, 3 CFR, 1987 Comp., p. 220), which codifies a Presidential Memorandum on Government Patent Policy (dated February 18, 1983). The

executive order extends the applicability of 35 U.S.C. Chapter 18, to the extent permitted by law, to commercial organizations other than small businesses (i.e., as a matter of policy, cooperative agreements should grant to all commercial organizations, regardless of size, title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government).

(11) Procurement standards. Grants officers may use Attachment O of OMB Circular A-110 as guidance and need not specifically incorporate its provisions into grants or cooperative agreements with commercial organizations, particularly those organizations whose procurement systems are approved as the result of a Contractors' Purchasing Systems Review under 48 CFR 44.3 (in the "Federal Acquisition Regulation"). In all cases, awards should include terms to ensure that recipients:

(i) Follow basic principles of business intended to produce rational decisions and fair treatment in contracts entered into by them under the agreements.

(ii) Comply with federal statutes, executive orders, regulations, and other legal requirements applicable to contracts that recipients enter into under federal assistance agreements.

(12) Fee or profit. In accordance with 32 CFR 21.11, grants and cooperative agreements shall not:

(i) Provide for the payment of fee or profit to the recipient.

(ii) Be used to carry out programs where fee or profit is necessary to achieving program objectives.

(13) Disputes.

(i) The Department of Defense's policy is to try to resolve all issues concerning grants and cooperative agreements by mutual agreement at the grants officer's level. Contracting activities are encouraged to use alternate dispute resolution (ADR) procedures to the maximum extent practicable. These procedures are any voluntary means used to resolve issues in controversy without the need to resort to litigation. Examples of the many procedures that may be used include settlement negotiations, mediation, and fact finding.

(ii) Whenever a recipient submits, in writing, a disputed claim or issue to the government, the grants officer shall consider the claim or disputed issue and, within 60 days of receipt of the claim or issue in dispute, either:

(A) Prepare a written decision, which shall

include the basis for the decision and shall be documented in the award file; or

(B) Notify the recipient of a specific date when he or she will render a written decision, if more time is required to do so. The notice shall inform the recipient of the reason for delaying the decision (e.g., a need for the recipient to provide additional information to support the claim).

(iii) In the event the recipient decides to appeal the decision, the grants officer shall make every effort to encourage the recipient to enter into ADR procedures with the grants officer. Terms of the ADR procedures to be used should be established at that time between the government and the recipient.

(iv) If the recipient refuses to participate in, or does not accept the results of the ADR procedures, they may bring such formal claims as are authorized by 28 U.S.C. §1491 or other applicable statutes.

(b) Exception. In accordance with of 32 CFR 37, subpart B, cooperative agreements under 10 U.S.C. 2371 that are awarded to commercial organizations may incorporate different administrative requirements than those provided for in paragraph (a) of this section.

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